

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	
David Levaughan Gross,	:	Chapter 13
	:	
Debtor.	:	
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David Levaughan Gross,	:	Bankr. #13-11718/BIF
Movant,	:	
v.	:	Hearing: November 19, 2013, 11 A.M.
	:	
(The Estate of) Anne Ballinger, POA	:	Motion of Debtor to Avoid
for Edward Watson,	:	Judicial Lien of Anne Ballinger
Respondent.	:	

**MOTION OF DEBTOR DAVID LEVAUGHAN GROSS
TO AVOID JUDICIAL LIEN OF ANNE BALLINGER**

David Levaughan Gross hereby certifies, by and through counsel Sherri Dicks, Esquire the following:

1. Debtor David Levaughan Gross (hereinafter “Debtor” or “Movant”), commenced this case on February 28, 2013 by filing a Voluntary Petition for relief under Chapter 13 of Title 11 of the United States Bankruptcy Code.

2. This Court has jurisdiction over this motion, filed pursuant to 11 U.S.C. § 522(f) to avoid and cancel a judicial lien held by Anne Ballinger, (hereinafter “Ballinger” or “Creditor”) on real property used as the residence of the Debtor and personalty of Debtor, under 28 U.S.C. § 1334.

3. Pursuant to 11 U.S.C. § 522(f)(1) and Bankruptcy Rules 4003 and 9014, the Code provides that the Debtor may avoid and cause to be cancelled a judgment lien held by the late Anne Ballinger, Power of Attorney (POA) for Edward Watson on real and/or personal property held by Debtor(s) for Debtor(s) personal use.

4. David Levaughan Gross (“Debtor”), at the time of filing, was the fee simple owner of an investment real property located at 2422 W. Harold Street, Philadelphia County, Philadelphia, Pennsylvania 19132 (hereinafter the “Property”).

5. Schedule A of the Voluntary Petition of the Debtor, indicating ownership of the Property, is attached hereto as Exhibit “A” and incorporated by reference.

6. A City of Philadelphia Property Search reveals the average property sale, for like and kind real property of the Debtor, in recent years at \$39,000.00, same attached hereto as Exhibit “B” and incorporated by reference.

7. A Realtor.com electronic appraisal reveals an estimated value of the Property at \$22,445, said appraisal attached hereto as Exhibit “C” and incorporated by reference.

8. Debtor David Levaughan Gross, pursuant to the entry of a judicial lien, is indebted to (the Estate of) Anne Ballinger, POA for Edward Watson in the amount of \$65,388.85.

9. Upon information and belief, Anne Ballinger deceased on February 19, 2013 and an estate raised on or about March 8, 2013, although counsel has not provided proof of same as of this date.

10. The said judicial lien is entered of record as follows:

11. A Confession of Judgment was entered against Debtor April 1, 2010 pursuant to Docket No. 100306471 in the Court of Common Pleas, First Judicial District of Pennsylvania.

12. At the time of filing of the Confession of Judgment, Debtor David Levaughan Gross no longer owned the property at issue in the Confession of Judgment by Creditor, Docket No. 100306471 in the Court of Common Pleas, First Judicial District of Pennsylvania.

13. At the time of filing of the Confession of Judgment, and at the time of filing of the instant Petition, Schedule B of the Petition of Debtor demonstrates personalty valued at \$39,725.00 and

Schedule C demonstrates that full exemptions have been taken without objection for the \$39,725.00 Schedule B personalty, said schedules attached hereto as Exhibit "D" and incorporated by reference.

14. There is little or nominal equity or value in the Property of the Debtor above the exemption to which Debtor is entitled based upon an average property value of \$22,485.00.

15. A Mortgage held by John W. Moore, in the amount of \$35,000.00 was taken against the property on December 22, 2004, a copy of same attached hereto as Exhibit "E" and incorporated by reference.

16. At the time of filing the petition for relief, a number of judgments also existed against the Property.

17. The claims, *inter alia*, included a City of Philadelphia (hereinafter "City") Department of Water Revenue lien in the amount of \$4,918.33, a City real property tax lien in the amount of \$2,028.63 and a City Department of Licenses and Inspections code enforcement judgment in the amount of \$1,500.00. Further, there is approximately \$1,200.00 in judgments from Philadelphia Traffic Court.

18. Proofs of claim have not yet been filed by these creditors in the amounts stated above despite the claims deadline of August 27, 2013.

19. Following the surrender and sale of the Property, Debtor anticipates \$0.00 of nonexempt equity shall be available for prorata distribution toward creditor claims, based upon the approximate negative equity of \$12,240.96.

20. Debtor does not possess any non-exempt property beyond the anticipated proceeds from the surrender and sale of the Property for which Creditor may attach, and therefore the lien of (the Estate of) Anne Ballinger should be avoided.

21. Debtor proposes to discharge this secured creditor through the instant Chapter 13

bankruptcy.

22. Debtor further requests that the judgment lien of (the Estate of) Anne Ballinger be removed immediately and avoided upon the discharge of the Chapter 13 bankruptcy of the Debtor.

WHEREFORE, Debtor respectfully prays that this Honorable Court immediately avoid and cancel the judicial lien referred to herein, and grant such additional or alternative relief as may be deemed just and proper.

LAW OFFICES OF SHERRI R. DICKS, P.C.

Dated: October 21, 2013

/s/Sherri Dicks

By: SHERRI DICKS
Counsel for Debtor/Movant
David Levaughan Gross